



U.S. Department of Justice

United States Attorney
Southern District of New York

The Silvio J. Mollo Building
One Saint Andrew's Plaza
New York, New York 10007

August 1, 2023

BY ECF

The Honorable P. Kevin Castel
United States District Judge
Southern District of New York
Daniel Patrick Moynihan U.S. Courthouse
500 Pearl Street
New York, New York 10007

Re: United States v. Mauricio Hernandez Pineda, S4 15 Cr. 379 (PKC)
United States v. Juan Orlando Hernandez, S7 15 Cr. 379 (PKC)
United States v. Juan Carlos Bonilla Valladares, S8 15 Cr. 379 (PKC)

Dear Judge Castel:

The Government respectfully writes in response to the Court's Order dated August 1, 2023. (Dkt. No. 601). In that Order, the Court directs the Government to explain the basis for its assertion in its June 22, 2023 letter (Dkt. No. 575) that, in the Court's June 21, 2023 Order (Dkt. No. 574), the Court ordered defendant Juan Orlando Hernandez ("Hernandez") to file any notice pursuant to Section 5 of the Classified Information Procedures Act ("CIPA") by July 11, 2023. The Government apologizes for any misunderstanding and sets out below the basis for its assertion.

On May 3, 2023, following the filing of the Government's CIPA Section 4 motions, the Court issued an Order (Dkt. No. 555) stating that, "[i]f cleared counsel wishes to challenge any of the substitutions (or any other matter related to classified material)," counsel must do so by May 26, 2023. The Government construed the May 26 deadline in the context of anticipated litigation under CIPA Sections 5 and 6—which naturally follows the Section 4 stage, and which the Court previously had referenced in its March 15, 2023 Order addressing the Government's request to adjourn its Section 4 deadline. (See Dkt. No. 536 ("Because the USAO has previously advised the Court that it expects litigation under sections 5 and 6 of CIPA is likely . . . in the event the USAO seeks a further extension of the dates set forth below, it should be accompanied by an application to vacate the September 18, 2023 trial date.")). Cleared counsel also appears to have understood the May 26 deadline for "any other matter related to classified material" as encompassing Section 5 notice: On June 15, 2023, Hernandez submitted a letter requesting an adjournment of "the Court imposed May 26, 2023, deadline for the defense CIPA 5 filing[.]" (Dkt. No. 564). This defense letter expressly stating that cleared counsel had missed the May 26 deadline for "CIPA 5 filing" further reinforced the Government's understanding—as reflected in its June 22 letter about which

the Court has inquired, filed less than a week later—that the deadline set by the Court relating to classified material encompassed any Section 5 notice.

The Court responded to Hernandez's June 15 request by Order dated June 20, 2023 (Dkt. No. 570), adjourning the May 26 deadline and directing cleared counsel to "submit any challenges to the government's substitutions or any other matter related to classified material by June 23, 2023." The following day, June 21, 2023, the Court issued an Order (Dkt. No. 574) addressing Hernandez's motion for reconsideration and further adjourning the relevant deadline, stating that "[t]he Court will consider any submission by cleared counsel for defendant Juan Orlando Hernandez provided that it is filed . . . by July 11, 2023, and addresses both tranches of the government's substitutions."

Based on the foregoing, in its June 22 letter, the Government stated its understanding that the Court's July 11 deadline for any submission by cleared counsel encompassed CIPA Section 5 notice. In any event, the Government apologizes for any misunderstanding of the Court's Orders regarding the CIPA schedule in this matter. The Government will, of course, continue to adhere to the schedule set by the Court and respond to any filing by Hernandez made on August 9, 2023. To the extent the August 9 deadline does not contemplate Hernandez's CIPA Section 5 notice, the Government respectfully requests that the Court set a deadline for such notice to be provided, in order to ensure adequate time to complete the CIPA process sufficiently in advance of trial.

Respectfully submitted,

DAMIAN WILLIAMS
United States Attorney for the
Southern District of New York

By: _____ /s/
Jacob H. Gutwillig / David J. Robles
Elinor L. Tarlow / Kyle A. Wirshba
Assistant United States Attorneys
(212) 637-2215 / 2550 / 1036 / 2493

cc: Defense Counsel (by ECF)